

AMENDED IN SENATE JUNE 13, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2883**

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**Introduced by Committee on Insurance (Assembly Members Daly (Chair), Travis Allen, Bigelow, Calderon, Cooley, Cooper, Dababneh, Frazier, Beth Gaines, Gatto, Gonzalez, and Rodriguez)**

February 25, 2016

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An act to *amend Sections 3351 and 3352 of*, to add Section 77.7 to, and to repeal Section 6354.7 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2883, as amended, Committee on Insurance. Workers' compensation: utilization ~~review~~. *review: employees.*

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, within the Department of Industrial Relations, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires every employer to establish a utilization review process, and defines "utilization review" as utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve an injured worker from the effects of his or her injury, treatment recommendations by physicians, prior to, retrospectively, or concurrent with providing medical treatment services.

Existing law also establishes the Commission on Health and Safety and Workers' Compensation in the department. Existing law directs the commission to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases. Existing law also authorizes the commission to conduct or contract for studies it deems necessary to carry out its responsibilities.

This bill would require the commission to conduct, or contract for the conduct of, a feasibility study regarding the extent to which physicians' requests for authorization of medical treatment for injured employees may be processed using an entirely paperless system. The bill would provide that the focus of the feasibility study shall be to determine whether the change to a paperless system would reduce the time required to provide medical treatment services to injured employees and improve the clarity and quality of communication between physicians and the employer's utilization review process. The bill would require the commission to consult with stakeholders, as specified, and would grant the commission discretion to decide whether to conduct or contract for the conduct of the feasibility study. The bill would also delete obsolete provisions.

*Existing law defines an employee, for purposes of the laws governing workers' compensation, to include, among other persons, officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Existing law excludes from that definition, among other persons, officers and directors of a private corporation who are the sole shareholders of the corporation and working members of a partnership or limited liability company, as specified, unless they elect to come under the compensation provisions of the laws governing workers' compensation.*

*This bill would revise those exceptions from the definition of an employee to apply to an officer or member of the board of directors, as specified, if he or she owns at least 15% of the issued and outstanding stock of the corporation, or an individual who is a general partner of a partnership or a managing member of a limited liability company, and that person elects to be excluded by executing a written waiver of his or her rights under the laws governing workers' compensation, stating under penalty of perjury that he or she is a qualifying officer or director, or a qualifying general partner or managing member, as applicable. The bill would specify the effective date of the waivers.*

*The bill would also make technical and clarifying changes to the provision excluding specified persons from the definition of employee.*

*Existing law proscribes the crime of perjury.*

*By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 77.7 is added to the Labor Code, to read:  
2     77.7. (a) The commission shall conduct, or contract for the  
3     conduct of, a feasibility study regarding the extent to which  
4     physicians' requests for authorization of medical treatment for  
5     injured employees may be processed using an entirely paperless  
6     system. The focus of the feasibility study shall be to determine  
7     whether the change to a paperless system would reduce the time  
8     required to provide medical treatment services to injured employees  
9     and improve the clarity and quality of communication between  
10    physicians and the employer's utilization review process. To make  
11    that determination, the study shall also include an assessment  
12    regarding the current state of infrastructure in place to meet this  
13    goal, and any additional costs and requirements for providers and  
14    the state that may be deemed necessary to ensure efficiency,  
15    interoperability, and privacy protections in making the change to  
16    a paperless system.  
17    (b) The commission shall consult with stakeholders, including  
18    employers, employees, and medical providers, in conducting or  
19    contracting for the feasibility study pursuant to subdivision (a).  
20    (c) The commission shall have discretion to decide whether to  
21    conduct or contract for the conduct of the feasibility study pursuant  
22    to this section.  
23    SEC. 2. Section 3351 of the Labor Code is amended to read:

1 3351. “Employee” means every person in the service of an  
2 employer under any appointment or contract of hire or  
3 apprenticeship, express or implied, oral or written, whether lawfully  
4 or unlawfully employed, and includes:

5 (a) Aliens and minors.

6 (b) All elected and appointed paid public officers.

7 (c) All officers and members of boards of directors of  
8 quasi-public or private corporations while rendering actual service  
9 for the corporations for pay; ~~provided that, where the officers and~~  
10 ~~directors of the private corporation are the sole shareholders~~  
11 ~~thereof, the corporation and the officers and directors shall come~~  
12 ~~under the compensation provisions of this division only by election~~  
13 ~~as provided in subdivision (a) of Section 4151. pay may elect to~~  
14 ~~be excluded from coverage in accordance with subdivision (p) of~~  
15 ~~Section 3352.~~

16 (d) Except as provided in subdivision (h) of Section 3352, any  
17 person employed by the owner or occupant of a residential dwelling  
18 whose duties are incidental to the ownership, maintenance, or use  
19 of the dwelling, including the care and supervision of children, or  
20 whose duties are personal and not in the course of the trade,  
21 business, profession, or occupation of the owner or occupant.

22 (e) All persons incarcerated in a state penal or correctional  
23 institution while engaged in assigned work or employment as  
24 defined in paragraph (1) of subdivision (a) of Section 10021 of  
25 Title 8 of the California Code of Regulations, or engaged in work  
26 performed under contract.

27 (f) All working members of a partnership or limited liability  
28 company receiving wages irrespective of profits from the  
29 partnership or limited liability company; ~~provided that where the~~  
30 ~~working members of the partnership or limited liability company~~  
31 ~~are general partners or managers, the partnership or limited liability~~  
32 ~~company and the partners or managers shall come under the~~  
33 ~~compensation provisions of this division only by election as~~  
34 ~~provided in subdivision (a) of Section 4151. If a private corporation~~  
35 ~~is a general partner or manager, “working members of a partnership~~  
36 ~~or limited liability company” shall include the corporation and the~~  
37 ~~officers and directors of the corporation, provided that the officers~~  
38 ~~and directors are the sole shareholders of the corporation. If a~~  
39 ~~limited liability company is a partner or member, “working~~  
40 ~~members of the partnership or limited liability company” shall~~

1 ~~include the managers of the limited liability company.~~ *company*  
2 *may elect to be excluded from coverage in accordance with*  
3 *subdivision (q) of Section 3352.*

4 ~~(g) For the purposes of subdivisions (e) and (f), the persons~~  
5 ~~holding the power to revoke a trust as to shares of a private~~  
6 ~~corporation or as to general partnership or limited liability company~~  
7 ~~interests held in the trust, shall be deemed to be the shareholders~~  
8 ~~of the private corporation, or the general partners of the partnership,~~  
9 ~~or the managers of the limited liability company.~~

10 SEC. 3. *Section 3352 of the Labor Code is amended to read:*

11 3352. "Employee" excludes the following:

12 (a) ~~Any~~ A person defined in subdivision (d) of Section 3351  
13 who is employed by his or her parent, spouse, or child.

14 (b) ~~Any~~ A person performing services in return for aid or  
15 sustenance only, received from any religious, charitable, or relief  
16 organization.

17 (c) ~~Any~~ A person holding an appointment as deputy clerk or  
18 deputy sheriff appointed for his or her own convenience, and who  
19 ~~receives no~~ *does not receive* compensation from the county or  
20 municipal corporation or from the citizens ~~thereof of that county~~  
21 *or municipal corporation* for his or her services as the deputy. This  
22 exclusion is operative only as to employment by the county or  
23 municipal corporation and does not deprive ~~any that person so~~  
24 ~~deputized~~ from recourse against a private person employing him  
25 or her for injury occurring in the course ~~of of~~, and arising out ~~of~~  
26 *of*, the employment.

27 (d) ~~Any~~ A person performing voluntary services at or for a  
28 recreational camp, hut, or lodge operated by a nonprofit  
29 organization, exempt from federal income tax under Section ~~101(6)~~  
30 *501* of the Internal Revenue Code, of which he or she or a member  
31 of his or her family is a member and who ~~receives no~~ *does not*  
32 *receive* compensation for those ~~services services~~, other than meals,  
33 lodging, or transportation.

34 (e) ~~Any~~ A person performing voluntary service as a ski  
35 patrolman who ~~receives no~~ *does not receive* compensation for  
36 those ~~services services~~, other than meals or lodging or the use of  
37 ski tow or ski lift facilities.

38 (f) ~~Any~~ A person employed by a ski lift operator to work at a  
39 snow ski area who is relieved ~~of of~~, and *is not performing any* any,

1 prescribed duties, while participating in recreational activities on  
2 his or her own initiative.

3 (g) ~~Any~~A person, other than a regular employee, participating  
4 in sports or athletics who ~~receives no~~ *does not receive*  
5 compensation for the participation other than the use of athletic  
6 equipment, uniforms, transportation, travel, meals, lodgings, or  
7 other expenses incidental thereto.

8 ~~(h) Any person defined in subdivision (d) of Section 3351 who~~  
9 ~~was employed by the employer to be held liable for less than 52~~  
10 ~~hours during the 90 calendar days immediately preceding the date~~  
11 ~~of the injury for injuries, as defined in Section 5411, or during the~~  
12 ~~90 calendar days immediately preceding the date of the last~~  
13 ~~employment in an occupation exposing the employee to the hazards~~  
14 ~~of the disease or injury for injuries, as defined in Section 5412, or~~  
15 ~~who earned less than one hundred dollars (\$100) in wages from~~  
16 ~~the employer during the 90 calendar days immediately preceding~~  
17 ~~the date of the injury for injuries, as defined in Section 5411, or~~  
18 ~~during the 90 calendar days immediately preceding the date of the~~  
19 ~~last employment in an occupation exposing the employee to the~~  
20 ~~hazards of the disease or injury for injuries, as defined in Section~~  
21 ~~5412.~~

22 *(h) A person described in subdivision (d) of Section 3351 whose*  
23 *employment by the employer to be held liable, during the 90*  
24 *calendar days immediately preceding the date of injury, for injuries*  
25 *as described in Section 5411, or during the 90 calendar days*  
26 *immediately preceding the date of the last employment in an*  
27 *occupation exposing the employee to the hazards of the disease*  
28 *or injury, for diseases or injuries as described in Section 5412,*  
29 *comes within either of the following descriptions:*

30 *(1) The employment was, or was contracted to be, for less than*  
31 *52 hours.*

32 *(2) The employment was, or was contracted to be, for wages of*  
33 *not more than one hundred dollars (\$100).*

34 (i) ~~Any~~A person performing voluntary service for a public  
35 agency or a private, nonprofit organization who ~~receives no~~ *does*  
36 *not receive* remuneration for the ~~services~~ *services*, other than meals,  
37 transportation, lodging, or reimbursement for incidental expenses.

38 (j) ~~Any~~A person, other than a regular employee, performing  
39 officiating services relating to amateur sporting events sponsored  
40 by ~~any~~ a public agency or private, nonprofit organization, who

1 ~~receives no~~ *does not receive* remuneration for these ~~services~~  
2 *services*, other than a stipend for each day of service no greater  
3 than the amount established by the Department of Human  
4 Resources as a per diem expense for employees or officers of the  
5 state. The stipend shall be presumed to cover incidental expenses  
6 involved in officiating, including, but not limited to, meals,  
7 transportation, lodging, rule books and courses, uniforms, and  
8 appropriate equipment.

9 (k) ~~Any~~ A student participating as an athlete in amateur sporting  
10 events sponsored by ~~any a public agency, agency or public~~ or  
11 private nonprofit college, ~~university~~ *university*, or school, who  
12 ~~receives no~~ *does not receive* remuneration for the ~~participation~~  
13 *participation*, other than the use of athletic equipment, uniforms,  
14 transportation, travel, meals, lodgings, scholarships, grants-in-aid,  
15 or other expenses incidental thereto.

16 (l) ~~Any~~ A law enforcement officer who is regularly employed  
17 by a local or state law enforcement agency in an adjoining state  
18 and who is deputized to work under the supervision of a California  
19 peace officer pursuant to paragraph (4) of subdivision (a) of Section  
20 832.6 of the Penal Code.

21 (m) ~~Any~~ A law enforcement officer who is regularly employed  
22 by the Oregon State Police, the Nevada Department of Motor  
23 Vehicles and Public Safety, or the Arizona Department of Public  
24 Safety and who is acting as a peace officer in this state pursuant  
25 to subdivision (a) of Section ~~830.32~~ 830.39 of the Penal Code.

26 (n) ~~Any~~ A person, other than a regular employee, performing  
27 services as a sports official for an entity sponsoring an  
28 intercollegiate or interscholastic sports event, or any person  
29 performing services as a sports official for a public agency, public  
30 entity, or a private nonprofit organization, which public agency,  
31 public entity, or private nonprofit organization sponsors an amateur  
32 sports event. For purposes of this subdivision, "sports official"  
33 includes an umpire, referee, judge, scorekeeper, timekeeper, or  
34 other person who is a neutral participant in a sports event.

35 (o) ~~Any~~ A person who is an owner-builder, as defined in  
36 subdivision (a) of Section 50692 of the Health and Safety Code,  
37 who is participating in a mutual self-help housing program, as  
38 defined in Section 50087 of the Health and Safety Code, sponsored  
39 by a nonprofit corporation.

1     

(p) An officer or member of the board of directors, as described  
2 in subdivision (c) of Section 3351, if he or she owns at least 15  
3 percent of the issued and outstanding stock of the corporation and  
4 executes a written waiver of his or her rights under this chapter  
5 stating under penalty of perjury that the person is a qualifying  
6 officer or director. The waiver shall be effective upon the date of  
7 receipt by the corporation's insurance carrier and shall remain  
8 effective until the officer or member of the board of directors  
9 provides the insurance carrier with a written withdrawal of the  
10 waiver.

11     

(q) An individual who is a general partner of a partnership or  
12 a managing member of a limited liability company who executes  
13 a written waiver of his or her rights under this chapter stating  
14 under penalty of perjury that the person is a qualifying general  
15 partner or managing member. The waiver shall be effective upon  
16 the date of receipt by the partnership or limited liability company's  
17 insurance carrier and shall remain effective until the general  
18 partner or managing member provides the insurance carrier with  
19 a written withdrawal of the waiver.

20     ~~SEC. 2.~~

21     SEC. 4. Section 6354.7 of the Labor Code, as added by Section  
22 84 of Chapter 6 of the Statutes of 2002, is repealed.

23     SEC. 5. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.